

**Delaware Department of Agriculture**  
**Pesticides Section, Enforcement**  
2320 South DuPont Highway  
Dover, Delaware 19901  
Enforcement Action/Violation

**Respondent:**

**Pinnacle Agriculture Distribution, Inc.**  
**6233 Stein Highway**  
**Seaford DE, 19973**

**Violations:**

§1224(c)(2) – Refusing or neglecting to keep and maintain records required by the LAW, or to make reports when and as required.

§1224(a)(10) – Neglecting or, after notice, refusing to comply with the LAW, the rules adopted under the LAW or any lawful order of the Department.

§ 1224(a)(3 – Engaging in the business of applying a pesticide on the lands of another without having a license granted by the Department.

**Penalty:**

Respondent signed a consent agreement on August 23<sup>rd</sup> 2017. In the agreement, Respondent agrees to the imposition of disciplinary sanctions which included a civil penalty of \$38,500.00.

**STIPULATED FACTS**

1. Pinnacle Agriculture Distribution, Inc. (“Respondent Pinnacle”) is a commercial pesticide applicator business with an office located at 6233 Stein Highway, Seaford DE, 19973. Robert Herring is listed as the Branch Manager of Respondent. Respondent Pinnacle is licensed (License No. 1796) by the Delaware Department of Agriculture (“the Department”). This license was granted June 12<sup>th</sup> 2017.
2. Mr. Thomas Engle is employed by Respondent Pinnacle. Mr. Engle is certified by the Department in Category 8.3.1.1, Agricultural Plant and 8.3.6 Right-of-Way (Certificate Number 96-141). Mr. Engle’s Delaware certification had expired on December 31<sup>st</sup> 2015; it was not renewed until after the investigation had been initiated.
3. Alex Moore is employed by Respondent Pinnacle as an applicator. Mr. Moore is not a certified applicator.
4. The Pesticide Section of the Department (“Complainant”) is bringing this enforcement action against Respondents. James Hughes (“Mr. Hughes”) is employed as an Environmental Program Manager I with the Department. Dustin Borntreger, (“Mr. Borntreger”) is employed as an Environmental Scientist II with the

Department.

5. On June 1<sup>st</sup> 2017, the Delaware Department of Agriculture received a phone call from concerned citizen. They called to report the possible application of pesticides without a certification or license. Mr. Hughes responded to this call and initiated a pesticide misuse investigation.
6. On June 6<sup>th</sup> 2017, Mr. Hughes arrived at Donnie's Market located at 12179 Seashore Hwy, Bridgeville, DE 19933. Mr. Hughes spoke with Mr. Chris Short and Mr. Matt Short, owners of Donnie's Market; they are also owners of C&M Farms. During their conversation they explained that they only did small field sprays for themselves and that the larger jobs were done by two separate commercial applicators. The two commercial businesses mentioned were Evans Farms and Pinnacle Ag.
7. Mr. Hughes contacted Kevin Evans of Evan Farms LLC, Business License 1539. Mr. Hughes asked whether or not Evans Farms had done any applications for C&M Farms. Mr. Evans stated that he no longer sprays for C&M Farms and that all of their applications were done by Pinnacle Ag. Mr. Evans stated that on June 3<sup>rd</sup> 2017 he witnessed Pinnacle Ag. making a commercial pesticide application to sweet corn located Dublin Hill Farms.
8. On June 6<sup>th</sup> 2017, at 11:06 AM Mr. Hughes arrived at 6233 Stein Hwy., Seaford DE 19973, the office of Pinnacle Ag. Mr. Hughes met with Bob Herring, manager of the warehouse division. Mr. Herring stated that he was unaware of the custom application part of the business not being licensed with the Department. Mr. Herring stated that Tom Engle, sales manager of the Preston Location would be able to answer questions concerning the custom application business in Delaware.
9. Mr. Engle arrived at the Pinnacle office and met with Mr. Hughes. Mr. Herring and the Administrative specialist were all present during this meeting. Mr. Hughes requested two years of application records. Mr. Engle began naming all of the customers in Delaware that had received custom applications of pesticides to their farms. Mr. Engle instructed the administrative specialist to make copies of these records for Mr. Hughes. Mr. Engle listed Dublin Hill Farms, C&M Farms and Richard Ashley as customers in Delaware. Mr. Engle stated that he was unaware that Pinnacle did not have a Pesticide Business License in Delaware. Mr. Hughes asked to see Mr. Engle's certification card. Mr. Engle only had a valid certification in the state of Maryland. Mr. Engle then stated that he had more records of application at his Preston, Maryland office. Mr. Engle agreed to send all of the Delaware application records to Hughes. Mr. Hughes issued a Cease and Desist order at the conclusion of the conversation. Mr. Hughes asked Mr. Engle if he understood the meaning of the Cease and Desist order to which he replied "Yes."
10. On June 7<sup>th</sup> 2017, Mr. Hughes received a fax from Shirley Norman, office manager of Respondent. The fax included thirteen (13) application records. The records were for the same customers that Mr. Engle had previously mentioned. Two additional

customers were included in the faxed records; their names were Riley Williamson and Lance Marvel. The records received did not have all of the required elements outlined in 601 Delaware Pesticide Rules and Regulations 14.0.

#### 14.1 Commercial Applicators

Commercial applicators shall, for a period of two years from the date of application, keep records detailing the application of any pesticides to include:

14.1.1 The brand name of the pesticide used. In the case of a Restricted Use Pesticide or a pesticide which is used under the provisions of **40 Code of Federal Regulations**, Part 170, Worker Protection Standards, the EPA Registration Number shall also be recorded at or before the time of application.

14.1.2 When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs./acre, etc.)

14.1.3 The date and specific area treated.

14.1.4 The pest against which the pesticide was used.

14.1.5 The applicator's name, and when applicable, the name of the certified applicator responsible for his supervision.

14.1.6 When label directions advise precaution in regard to drift, on-site weather conditions to include:

14.1.6.1 Wind velocity and direction

14.1.6.2 Temperature

14.1.6.3 Relative humidity

11. Fourteen records of pesticide applications were received. The missing elements from the records included: Target pest (14), applicator name (14), weather conditions (13), brand name (3), EPA registration number (11), specific area treated (7)

12. Mr. Hughes had conducted a routine container containment inspection with Respondent Pinnacle on December 28<sup>th</sup> 2016. During this routine inspection Mr. Hughes notated on his notice of inspection: "Must Obtain Business License for Seed Treatment & Custom Ag Spraying prior to any sales or spraying. Call Kenda 698-4571 to obtain." This notice was signed and a copy was given to Mr. Bob Herring. Mr. Hughes, using the Departments pesticide database, documented that Mr. Herring had worked for Aurora Ag. (DDA Lic. No. 1574) as a manager and Mr. Engle had worked for Crop Production Services (DDA Lic. No. 1301) as an applicator.

13. On June 12<sup>th</sup> 2017, Mr. Hughes met Mr. Engle in Seaford DE. During this meeting Mr. Hughes asked Mr. Engle to initial all of the records that the Department had received via fax. This was to authenticate the records since they had been received through the fax machine. Hughes also asked Mr. Engle who the applicator was for all of the applications since this information was missing from the records. Mr. Engle stated that Alex Moore was the applicator. Upon returning to the office, Mr. Hughes verified that Alex Moore was not listed as a certified applicator in the Departments pesticide database.
14. Gramoxone Inteon Herbicide, EPA Registration Number 100-1217 is a Restricted Use Pesticide registered by the Department for sale in use in the State of Delaware.
15. Keystone Herbicide, EPA Registration Number 62719-368 is a Restricted Use Pesticide registered by the Department for sale in use in the State of Delaware.
16. AAtrex 4L Herbicide, EPA Registration Number 100-497 is a Restricted Use Pesticide registered by the Department for sale in use in the State of Delaware.
17. Ravage Insecticide, EPA Registration Number 89168-16-89391 is a Restricted Use Pesticide registered by the Department for sale in use in the State of Delaware.
18. Devour Herbicide, EPA Registration Number 89167-24-89391 is a Restricted Use Pesticide registered by the Department for sale in use in the State of Delaware.
19. Bellum, EPA Registration Number 83100-41-83979 is a General use pesticide registered by the Department for sale in use in the State of Delaware.
20. Sharpen Powered by Kixor Herbicide, EPA Registration Number 7969-278 is a General use pesticide registered by the Department for sale in use in the State of Delaware.
21. Envy Intense Herbicide, EPA Registration Number 89168-17-89391 is a General use pesticide registered by the Department for sale in use in the State of Delaware.
22. DuPont Instigate Herbicide, EPA Registration Number 352-873 is a General use pesticide registered by the Department for sale in use in the State of Delaware.
23. Drexel Simazine 4L, EPA Registration Number 19713-60 is a General use pesticide registered by the Department for sale in use in the State of Delaware.
24. Capreno Herbicide, EPA Registration Number 264-1063 is a General use pesticide registered by the Department for sale in use in the State of Delaware.
25. Liberty 280 SL Herbicide, EPA Registration Number 264-829 is a General use pesticide registered by the Department for sale in use in the State of Delaware.

26. The Restricted Use Pesticide statement box on the Restricted Use Pesticide Labels which were recorded as being used by the Respondent state in part: "For Retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification." During the time period covered within this complaint there was not a certified applicator with a valid Delaware certification with the category 1A (Agricultural Plant) in direct supervision with the applicator. Eleven of the fourteen application records contained Restricted Use Pesticides as part of the spray mix.

In the past 5 years, Respondent has no pesticide compliance violations with the Department.